Jurisdictional Statement

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File Number:

SUPREME COURT OF THE UNITED STATES
October Term 1981

MR. JOSEPH CAFFIERO, and MRS. JOSEPH CAFFIERO, his wife, Appellants, v. BOARD OF EDUCATION OF PISCATAWAY TOWNSHIP, et al, Appellees.	ON APPEAL FROM DECISION OF NEW JERSEY SUPREME COURT JURISDICTIONAL STATEMENT AND APPENDIX

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I.

QUESTIONS PRESENTED

Does New Jersey Statute 18A:37-3, which holds parents liable for damage caused to school property by their children, violate the due process and equal protection clauses of the Constitution of the United States.

II.

ALL PARTIES TO PROCEEDINGS APPEALED FROM

The following is a list of all parties to the proceedings before the New Jersey Supreme Court:

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2. The Board of Education of Piscataway
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   P.O. Box 311
   New Brunswick, N.J. 08903

3. The Board of Education of Roselle
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4. Defendants O'Donnell
   By A. Herbert D'Amico, Esq.
   90 Bayard
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5. Defendants Monagas
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7. Defendants Caffiero
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8. Attorney General of New
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Deputy Attorney General
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9. New Jersey School Boards
Association
By David W. Carroll, Esq.
Christine D. Weger, Esq.
315 West State St.
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10. Great American Insurance
Company
By Methfessel and Werbel,
Esqs.
156 East Milton Avenue
Rahway, N.J. 07065

11. Education Law Center, Inc.
By Fredrica Hochman, Esq.
Kathryn A. Brock, Esq.
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III.

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IV.

CITATION OF NEW JERSEY SUPREME COURT OPINION

The opinion of the New Jersey Supreme Court is officially reported at 86 N.J. 308; and in the Atlantic Reporter at 431 A2d 799.

V.

JURISDICTION

1. Nature of Proceedings: The Plaintiffs in this action are the Boards of Education of two small suburban communities in New Jersey. They filed suit against the Defendants, who are school children in schools operated by those Boards, and the parents of those children. The Boards of Education seek to hold the parents of the school children liable for damage caused by those children to school premises.

The Boards of Education seek to impose strict and absolute liability upon the parents under New Jersey Statute 18A: 37-3, which by its terms imposes liability upon the parents of children attending public school for any damage caused to public school property by those children. That State Statute imposes such strict and absolute liability without requiring any proof of parental negligence or fault of any kind. The New Jersey Statute imposes liability upon the parents without requiring that the parents be shown to have neglected to properly control or discipline their children, or in some other manner have acted to prevent the child's actions which resulted in the damage to the school property.

2. Judgment: The decision of the New Jersey Supreme Court was entered on

June 9, 1981. That decision upheld the constitutional validity of New Jersey Statute 18A:37-3. However, there was a strong dissent by Justice Clifford to that decision, citing the strong dissent by Judge Krane to the Appellate Division decision which also upheld the constitutional validity of the New Jersey Statute. The Appellate Division and Supreme Court decisions overruled the trial Court decisions by Judges Stroumtsos (Caffiero case) and Long (Monagas case), which both held that the New Jersey Statute unconstitutional. The New Jersey Supreme Court's decision on June 9, 1981, remanded cases to the trial Courts for further hearings.

3. Notice of Appeal: Notice of Appeal in this case was filed on September 7, 1981 with the Clerk of the Supreme Court of New Jersey.

4. Jurisdiction: The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1257 (2) which provides in pertinent part as follows:

> Final Judgments or decrees rendered by the highest Court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: ...
>
> (II.) By Appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the constitution, treaties or laws of the United States, and the decision is in favor of its validity.

VI.

CONSTITUTION PROVISIONS

New Jersey Statute 18A:37-3 violates the due process and equal protection clauses of Amendment Fourteen Section One of the Constitution of the United States, which provides in pertinent part as follows:

...nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

VII.

STATEMENT OF CASE

Plaintiffs in this case are the Boards of Education of two small suburban communities in New Jersey. These Boards of Education operate the public schools in those communities. The Defendants are children in attendance at public schools operated by the respective Boards of Education, and the parents of those children.

Plaintiffs instituted suit against the school children and their parents for alleged acts by the school children which caused damage to school property. The complaints generally asserted separate causes of action against the school

children for the damage, and against the parents. The separately stated causes of action against the parents first alleged liability of the parents on the common law principals of negligent supervision and control, and then separately alleged causes of action under New Jersey Statute 18A:37-3, which by its terms imposes unlimited liability, regardless of fault, upon the parents of any school child who damages public school property.

Answers were filed on behalf of the children and the parents in these cases, except for Defendants Martone in the Caffiero case. The Martone Defendants appear to have never retained counsel, or made an appearance of any kind in these cases, and the Plaintiff Board of Education of Piscataway sought and obtained a default judgment against Defendants Martone.

children for the damage, and against the parents. The separately stated causes of action against the parents first alleged liability of the parents on the common law principals of negligent supervision and control, and then separately alleged causes of action under New Jersey Statute 18A:37-3, which by its terms imposes unlimited liability, regardless of fault, upon the parents of any school child who damages public school property.

Answers were filed on behalf of the children and the parents in these cases, except for Defendants Martone in the Caffiero case. The Martone Defendants appear to have never retained counsel, or made an appearance of any kind in these cases, and the Plaintiff Board of Education of Piscataway sought and obtained a default judgment against Defendants Martone.

The issue of the constitutionality of New Jersey Statute 18A:37-3 was heard by the trial Courts on the basis of Motions for Summary Judgment. Both trial Judges held that the New Jersey Statute was an unconstitutional deprivation of parents' due process guarantees because it imposed upon parents' unlimited liability, regardless of fault, for the wrongful acts of their children, solely on the basis of the parent-child relationship. (See opinion of Judge Stroumtsos in Board of Education of Piscataway Township vs. Caffiero 159 N.J. Super 347; 387 A2d 1263 (Law Division 1978); opinion of Honorable Virginia A. Long in the Board of Education of Roselle vs. Monagas case held the statute unconstitutional for the same reasons expressed by the Court in the Caffiero case, however, Judge Long's opinion rendered on October 13, 1978, has not been published.

The respective Boards of Education appealed the trial Court's holdings of unconstitutionality to the Appellate Division of the Superior Court of New Jersey. For purposes of that Appeal, the respective cases were consolidated for the first time. The cases were argued before the Appellate Division on December 4, 1979, and decided on April 1, 1980. The three Judge Appellate Division panel was not unanimous in its opinion. Two Judges reversed the trial Courts, and upheld the constitutionality of the New Jersey Statute. However, Judge Krane, presiding Justice of the Appellate Division, filed a strong well reasoned separate dissenting opinion. (See Board of Education of Piscataway vs. Caffiero, 173 N.J. Super 204; 413 A2d 981).

The parents in both cases then appealed to the New Jersey Supreme Court. That

Supreme Court's decision was entered on June 9, 1981, but was not unanimous. The majority agreed to uphold the constitutionality of the New Jersey Statute, however, here, as in the Appellate Division, a strong separate dissenting opinion was filed. That opinion was filed by Justice Clifford, and agreed in principal with the dissenting opinion which had been filed by Judge Krane in the Appellate Division. (See Board of Education of Piscataway vs. Caffiero, 86 N.J. 308; 431 A2d 799).

The parents in these actions, first alleged the unconstitutionality of the New Jersey Statute in question in the answers which they filed. As indicated, the trial Courts on Motion for Summary Judgment separately held that the New Jersey Statute constituted an unconstitutional deprivation of the parents' guarantees of due process of law provided to them by the United States Constitution. The constitutional

issue was raised by Appeal to the Appellate Division, and then by Appeal to the Supreme Court. Although the trial Courts did not specifically pass upon the issue of constitutionality of the New Jersey Statute as it might violate the equal protections clause of the Fourteenth Amendment, that issue was raised at trial level, and considered by the Appellate Division, and the New Jersey Supreme Court.

VIII.

PLENARY CONSIDERATION

The New Jersey Statute in question so monumentaly violates our basic constitutional protections of due process and equal protection, that it should not be allowed to stand. That statute so far infringes upon those fundamentally guaranteed constitutional rights as to constitute a potential threat and danger to the rights of all of our citizens and groups of citizens.

The effect of that New Jersey Statute is to impose liability upon the parents of school children for acts performed by those school children outside of the home, and beyond the disciplinary reach of those parents, and under those circumstances to impose that unlimited financial responsibility upon that group of parents simply because they happen to be parents. The statute does not require that the parents shown to have been derelict or negligent in any way, but simply imposes absolute and unlimited financial liability upon parents because of acts performed by their children at times and places where the parents could not in any way be reasonably expected to be able to exercise any discipline or control over the children in order to have prevented the children from acting as they did.

If we allow such a statute to stand, it establishes a legislative principal abhorrent to our basic constitutional concepts of due

process and equal protection. If the statute in question here "...may impose liability upon the parents or guardians of pupils who injury school property without requiring a showing that the parents failed to fulfill some duty, why may it not impose such liability upon grandparents or aunts or uncles? Why may it not impose liability upon any person who witnesses an injury to school property, or any person who lives within 1,000 feet of a school? The point is that there is no logical connection between being a parent or guardian and injury to school property by a pupil. See Board of Education of Piscataway vs. Caffiero, Dissenting Opinion by presiding Justice Krane, at 413 A2d 981, 986).

Forty-nine states, including New Jersey, appear to have enacted one form or another of parental liability statute imposing liability upon parents for the unlawful acts of their children which cause damage to property.

However, in only eight states has the constitutionality of those acts been adjudicated, and in one such case, the act was found to be unconstitutional. (See Corley vs. Lewless, 227 Ga. 745, 182 S.E. 2d 766,(1971). The litigation in our present case, has arisen because the New Jersey Statute in question "...has until recently been permitted to lie, unused, unrecognized, and unwanted, in the state of desuetude..." although it had been enacted "... a few short years after the Civil War, prior even to the adoption of the Fourteenth Amendment, ..." (See Dissenting Opinion of Justice Clifford, opinion of the New Jersey Supreme Court in the Board of Education of Piscataway vs. Caffiero, 431 A2d 799, 808). The fact that forty-one of our sister states have not in any way adjudicated similar parental responsibility statutes, suggests that in those states enforcement of those statutes has probably been something less than zealous.

This in turn suggests, that if those sister states follow the experience which we have had here in New Jersey, they too will all be faced with challenges to the constitutional validity of their respective statutes.

We respectfully submit that the constitutional issue surrounding these types of strict liability-parental responsibility statutes ought to be decided by this Court at this time. A decision by this Court will provide guidance to the forty-one jurisdictions in which no adjudication has yet been had on these types of statutes, and hopefully, relief from the effect of these statutes in those eight jurisdictions which have upheld them.

We further submit that this Court ought to exercise its Appellate jurisdiction in this case because the type of statute in question is, in fact, such a blatant, monumental, and

subtley insidious violation of our cherished Fourteenth Amendment rights of due process and equal protection of our laws. Each of us can be said to belong catagorically to one type of group or organization, whether it be religious, racial, ethnic, or otherwise. Because of our association and relationship with the other members of the religious or ethnic groups or neighborhood group to which we might belong, are any of us willing to say that our state government can pass laws holding us personally responsible for the unlawful and damaging acts of other members of the groups to which we belong and with which we associate, based only upon a showing of our membership, relationship, or association with any such religious, social, ethnic, or neighborhood group? We submit that the parents in these present cases find themselves in the same situation that any of us could be placed in by similar legislation based upon strict

liability without faily by virtue of mere association with and relationship to the other members of any ethnic, racial, church or neighborhood group to which we might belong. We submit that statutes of this type step beyond the permissable borders of due process and equal protection, and we ask that this Court exercise its jurisdiction in this case in order to stop and prevent this type of subtle and insidious statutory intrusion upon personal rights.

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SEP 9 '81

File Number:

SUPREME COURT OF THE UNITED STATES

October Term 1981

BOARD OF EDUCATION OF PISCATAWAY TOWNSHIP, a public body of the State of New Jersey,	
Plaintiff-Respondent,	ON APPEAL FROM DECISION OF THE NEW JERSEY SUPREME COURT
v.	
MR. JOSEPH CAFFIERO, MRS. JOSEPH CAFFIERO, his wife, JAY CAFFIERO, MR. DANIEL O'DONNELL, MRS. DANIEL O'DONNELL, his wife, and FRANCIS O'DONNELL,	
Defendants-Appellants,	NOTICE OF APPEAL
and	
MR. DEAN MARTONE, MRS. DEAN MARTONE, his wife, and DEAN MARTONE,	
Defendants.	

SEP 9 '81

BOARD OF EDUCATION OF THE BOROUGH OF ROSELLE,

Plaintiff,

v.

TULIO MONAGAS, "JANE" MONAGAS, (first name being fictitious) and ANGEL MONAGAS,

Defendants,

and

GREAT AMERICAN INSURANCE COMPANY,

Intervenor.

Notice is hereby given that Mr. Joseph Caffiero and Mrs. Joseph Caffiero, Defendants in the above named action, hereby appeal to the Supreme Court of the United States from the Final Judgment of the Supreme Court of the State of New Jersey entered June 9, 1981. This Appeal is taken

pursuant to the authority of 28 USC Section 1257 (2).

DATED: 9-8-81

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SUPREME COURT OF NEW JERSEY
A-106/107/108/109 September Term 1980

BOARD OF EDUCATION OF
PISCATAWAY TOWNSHIP,
a public body of the
State of New Jersey,

Plaintiff-Respondent,

v.

MR. JOSEPH CAFFIERO, MRS. JOSEPH
CAFFIERO, his wife, JAY CAFFIERO,
MR. DANIEL O'DONNELL, MRS.
DANIEL O'DONNELL, his wife, and
FRANCIS O'DONNELL,

Defendants-Appellants,

and

MR. DEAN MARTONE, MRS. DEAN MARTONE,
his wife, and DEAN MARTONE,

Defendants.

BOARD OF EDUCATION OF THE BOROUGH
OF ROSELLE,

Plaintiff,

v.

TULIO MONAGAS, "JANE" MONAGAS,
(first name being fictitious) and
ANGEL MONAGAS,

Defendants-Appellants,

and

GREAT AMERICAN INSURANCE COMPANY,

Intervenor.

Argued February 10, 1981 -- Decided June 9, 1981.

On appeal from the Superior Court, Appellate Division, whose opinion is reported at 173 N.J.Super. 204 (1980).

James D. Martin argued the cause for appellants Mr. Joseph Caffiero, et al. (Lynch, Mannion, Lewandowski & Martin and Monico & Rappa, attorneys).

A. Herbert D'Amico argued the cause for appellants Mr. Daniel O'Donnell, et al.

Michael Muscio argued the cause for appellants Tulio Monagas, et al.

Joel N. Werbel argued the cause for intervenor Great American Insurance Company (Methfessel & Werbel, attorneys).

Fredrica Hochman argued the cause for amicus curiae Association for Children of New Jersey.

David B. Rubin argued the cause for respondent (Rubin, Lerner & Rubin, attorneys).

Alfred E. Ramey, Jr., Deputy Attorney General, argued the cause for amicus curiae Commissioner of Education (John J. Degnan, Attorney General of New Jersey, attorney; Stephen Skillman, Assistant Attorney General, of counsel).

Christine D. Weger, Associate Counsel, relied upon the brief submitted to the Appellate Division on behalf of amicus curiae New Jersey School Boards Association (David W. Carroll, General Counsel, attorney).

The opinion of the Court was delivered by PASHMAN, J.

In these cases we must determine the constitutionality of N.J.S.A. 18A:37-3,[1] which imposes vicarious liability without fault on the parents or guardian of any pupil who damages public school property. This statute is distinct from the general parental liability statute in New Jersey, which

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[1] N.J.S.A. 18A:37-3 provides:

> The parents or guardian of any pupil who shall injure any school property shall be liable for damages for the amount of the injury to be collected by the borad of education of the district in any court of competent jurisdiction, together with costs of suit.

holds a parent, guardian or other person with legal custody of a child liable for the child's acts of vandalism against any property only when there is failure or neglect to exercise reasonable supervision and control of the child's conduct. N.J.S.A. 2A:53A-15.[2] In contrast, as we hold today, the vicarious liability statute is applicable only

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[2] The current version of N.J.S.A. 2A:53A-15 provides:

> A parent, guardian or other person having legal custody of an infant under 18 years of age who fails or neglects to exercise reasonable supervision and control of the conduct of such infant, shall be liable in a civil action for any willful, malicious or unlawful injury or destruction by such infant of the real or personal property of another.

At the time of the acts giving rise to these suits, this statute placed a $250 limit on the parents' liability.

to the parents of public school pupils. Consequently, the defendants challenge its validity on due process and equal protection grounds. We hold that N.J.S.A. 18A:37-3 is constitutional.

I

According to the allegations of the civil complaint filed by plaintiff Board of Education of Piscataway Township, defendants Jay Caffiero, Francis O'Donnell and Dean Martone broke into Piscataway High School, on May 9, 1976. At the time, these defendants were enrolled as pupils in the Piscataway school system. Extensive damage was allegedly caused to the building and property inside by acts of the three defendants. In separate counts of the

complaint, the defendants' acts are described as either negligent and careless or willful and malicious.

The complaint also named as defendants the parents of each of the three pupils, seeking recovery on the grounds of either negligent supervision of the children under N.J.S.A. 2A:53A-15 or vicarious liability under N.J.S.A. 18A:37-3. The Caffieros and the O'Donnells answered the complaint, denying essentially all the allegations and raising separate defenses including the unconstitutionality of the vicarious liability statute. Following presentation of proofs by plaintiff, a default judgment in the amount of $28,540 was entered against the Martones for the damages, including investigatory and administrative costs, caused by the acts of the three young

defendants.[3]

To resolve the constitutional issue, plaintiff Board of Education moved for summary judgment against all the parents for any damages caused by their sons. The motion was submitted on the pleadings, briefs and oral arguments of the parties. Although it appears that the parents made certain admissions for purposes of the motion, the record does not indicate clearly what those admissions were. In effect, the trial court considered all factual questions unfavorably to

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[3] The default judgment was originally entered against the Caffieros, too, but this judgment was later vacated pursuant to a consent order.

the parents for the purpose of determining whether they would be liable to the school board under N.J.S.A. 18A:37-3. It held the statute unconstitutional as violative of due process, and therefore void. 159 N.J.Super. 347 (Law Div. 1978).

The Board of Education made a motion to the Appellate Division for leave to appeal from the trial court's interlocutory order. The Appellate Division granted the motion and, before argument, consolidated the appeal with Board of Education of Roselle v. Monagas.

The facts of Roselle are similar to those of Piscataway. On December 14, 1975, a fire occurred at a school building owned by the plaintiff Board of Education. Subsequently, the Board instituted an action against

defendant Angel Monagas, who was a pupil in the school system at the time of the fire, and his parents. The claim against the parents was based solely on N.J.S.A. 18A:37-3. The defendants filed an answer denying the allegations of the complaint and raising as a separate defense the unconstitutionality of the statute. The parents then moved for an order dismissing the claim against them. The trial court granted the motion for the reasons expressed by the trial court in the earlier Piscataway decision. The Board of Education moved before the Appellate Division for leave to appeal. The motion was granted and the case consolidated with Piscataway.

A divided Appellate Division panel reversed both trial court orders.

It held that the statute is constitutional and therefore the parents could be found vicariously liable under the statute for the damages to school property caused by their sons. 173 N.J.Super. 204 (1980).

The dissenting judge agreed with the parents that the statute is arbitrary and unreasonable and therefore violative of due process of law. He believed that vicarious liability without fault could be imposed only where a risk of harm has been created by the act or omission of the person held liable. He reasoned that imposition of liability based solely on the status of the defendants as parents was logically no different from imposition of liability based on some more tenuous relationship between the

defendant and wrongdoer, such as grandparent, uncle, or witness to the unlawful acts. Id. at 214 (dissenting opinion).

After the adverse disposition by the Appellate Division, defendants filed a motion before this Court for leave to appeal, which we granted, 85 N.J. 133 (1980). We also permitted the Association for Children of New Jersey, the Commissioner of Education, and the New Jersey School Boards Association to participate as amici curiae.

II

N.J.S.A. 18A:37-3 provides:

> The parents or guardian of any pupil who shall injure any school property shall be liable for damages for the amount of the injury to be collected by the board of education of the district in any court of competent jurisdiction, together with costs of suit.

The predecessor of this statute was enacted in 1867 as part of an act establishing the public school system. L. 1867, c. 179. The parental liability provision was included in a section concerning the discipline of pupils in the public schools. Id. at section 47. According to the amici, the statute was not relied upon by school boards during muchof its existence. Nevertheless, the Legislature reenacted the statute in 1903, L. 1903 (2d Sp.Sess.), c. 1, section 120, and codified it as part of Title 18A by L. 1967, c. 271. School boards have recently turned to the statute to deter vandalism and to cope with its burgeoning costs.[4]

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[4] The amici report the costs of intentional damage to school property to be millions of dollars per year.

Because the statute is part of the chapter of our education laws regulating the discipline of pupils in public schools, its purpose is not limited to compensating school districts for their losses. Another important purpose is to deter delinquent behavior by pupils and to aid in maintaining discipline in the schools. Any reading of the statute must keep these purposes in mind.

Before turning to the constitutional questions raised by this appeal, we must resolve several issues concerning the scope of the statute. First, although its language does not limit the statute strictly to the parents of public school pupils, it is clear from the position of N.J.S.A. 18A:37-3 among other statutory sections concerning public school

children that the word "pupil" has that limited meaning. The statute is not applicable to parents generally for damages caused by their children whether attending a public school or not.[5]

Second, because one purpose of the statute is to aid the disciplining of pupils, we believe that the words "parents or guardian" were intended to refer only to the person or persons who are responsible for a child. The inclusion of the word "guardian" indicates that the Legislature did not intend to impose liability solely on the basis of parental relationship. The statute applies only to persons

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[5] We express no view here about whether the statute applies where a school board seeks to recover from the parents of a pupil enrolled in a different public school system.

who have legal custody and control of a child and therefore can be charged on that basis with responsibility for the child's conduct.

Finally, although the statute itself does not include such a restriction, the damages caused by the pupil must have resulted from willful or malicious acts. This construction follows from the statute's purpose of aiding the disciplining of pupils and deterring acts of vandalism against school property. As we have said, the Legislature was concerned not solely with compensating school boards for damage to property but also with deterring delinquent behavior. Permitting the school board to recover from the parents where a child has caused damages negligently or without fault would not further the

purpose of deterrence in any way. A statute should not be read literally where such a reading is contrary to its purposes. Valerius v. City of Newark, 84 N.J. 591, 598 (1980); Restaurant Enterprises, Inc. v. Sussex Mutual Ins. Co., 52 N.J. 73 (1968); 2A Sutherland, Statutory Construction Sec. 46.07 (4th ed. 1973). The Court has not been made aware of any widespread attempt by school boards or their subrogees to recover from parents for negligent or faultless damage done to school property by their children. But cf. Board of Education of Palmyra v. Hansen, 56 N.J. Super. 567 (Law Div. 1959) (school board seeking recovery for fire allegedly caused by pupil's negligence). Nevertheless, we take this opportunity to construe the statute more narrowly than its literal wording. Thus, a school

board may not base a claim against parents on N.J.S A. 18A:37-3 unless it can show that the damages caused by the pupil resulted from willful or malicious acts and that the parents charged with liability had legal custody and control of the pupil at the time of his unlawful conduct.[6]

III

Having defined the intended scope of the statute, we must now consider whether it violates due process of law as arbitrary or capricious legislation. We note first that the statute is presumed to be constitutional, Male v. Ernest Renda Contracting Co., 64 N.J. 199, cert. denied, 419 U.S. 839 (1974); New Jersey Sports & Exposition Auth. v. McCrane, 61 N.J. 1, 8, appeal dismissed, 409 U.S. 943 (1972), and that the burden is on defendants to

demonstrate clearly that it violates a constitutional provision.

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6 Although the dissent criticizes the Court for "inventing" a new statute, nowhere does it attempt to say how our interpretation departs from the ordinary judicial function of interpreting statutes consonantly with legislative intent. See, e.g., Suter v. San Angelo Foundry, 81 N.J. 150, 160 (1979), and id. at 203-04 (Clifford, J., concurring). We do not decline this function simply because the statute is old.

Due process requires "only that a law shall not be unreasonable, arbitrary or capricious, and that the means selected shall bear a rational relation to the legislative object sought to be obtained." Robson v. Rodriquez, 26 N.J. 517, 522 (1958); see Nebbia v. New York, 291 U.S. 205 (1934). We do not sit as a body reviewing the wisdom of legislative decisions, whether new or old, but can determine only whether legislative action is within constitutional limitations.

New Jersey Sports & Exposition Auth. v. McCrane, supra, 61 N.J. at 8; A. & B. Auto Stores v. City of Newark, 59 N.J. 5, 19 (1971); Michael M. v. Superior Court, ____ U.S. ____, 67 L.Ed.2d 437, 450 (1981) (Stewar, J., concurring). If the statute does not violate the Constitution but is merely unwise or based on bad policy, then, despite the urging of the dissent, it is for the Legislature rather than this Court to deliver a finishing blow to it.

Defendants argue that the statute violates due process because no rational relationship exists between the purpose of deterring delinquent behavior and the imposition of liability on parents. They believe that a parental liability statute makes sense only if it is based on the parents' own wrongdoing, such as in N.J.S.A. 2A:53A-15. They argue further

that since there is no necessary relationship between a child's delinquent behavior and the parents' wrongdoing, the statute irrationally imposes vicarious liability without fault solely on the basis of status as parents.

Vicarious liability without fault is not a new concept. It has been upheld against due process challenges in a number of other situations. A. & B. Auto Stores v. City of Newark, supra (municipality liable without fault to property owner for damages caused by rioting mob); Adler's Quality Bakery, Inc. v. Gasteria, Inc., 32 N.J. 55 (1960) (owner of aircraft liable without fault for ground damages caused by operation of aircraft); New York Central R.R. Co. v. White, 243 U.S. 188 (1917) (employer liable without fault for injuries to employee under worker's compensation

law). Due process does not restrict legislative imposition of liability to situations in which a defendant or his agent is at fault. Other considerations may warrant the imposition of liability and a statute will be struck down only if it operates arbitrarily or capriciously.

In most instances, strict or vicarious liability has its source in a policy decision that the person held liable is in a position to spread the costs of injury over a large portion of the public. See W. Prosser, The Law of Torts Sec. 69 at p. 459 & Sec. 75 at p. 494 (4th ed. 1971). Some prominent examples of liability based on cost spreading principles are strict products liability, an employer's liability under worker's compensation, and an employer's vicarious liability under the doctrine of respondeat

superior for his employee's tortious conduct. Underlying each, at least in its modern application, is a policy decision that it is better for the consuming public to bear the costs of injuries than the innocent injured party.

Under the circumstances of this case, however, the innocent injured party is the public itself. Spreading of costs is obviously not the purpose of N.J.S.A. 18A:37-3 since the easiest way to accomplish that purpose would have been to impose no liability on the parents and compel the public to pay for the losses through tax dollars. Manifestly, a different policy decision is behind imposition of vicarious liability through N.J.S.A. 18A:37-3. The Legislature apparently believed that it was more important to compensate the public and to deter delinquent behavior than to spread

costs. We cannot say that such purposes are unreasonable and therefore an invalid basis for imposition of vicarious liability. As long as the means chosen by the Legislature have a rational relation to obtaining the objective sought, the statute will not be in violation of due process of law as an arbitrary or capricious enactment.

The existence of the parent-child relationship provides a rational basis for imposing liability and is a reasonable means to accomplish the purposes of compensation and deterrence. The United States Supreme Court has recognized that "parents have an important 'guiding role' to play in the upbringing of their children." H.L. v. Matheson, ___U.S. ___, ___, 67 L.Ed. 2d 388, 399 (1981); Bellotti v. Baird, 443 U.S. 662, 637-39 (1979). The Legislature could have reasonably believed that subjecting parents

to vicarious liability for their children's willful and malicious acts of vandalism would encourage parents to exercise their "guiding role" in the upbringing of their children. Through better parental supervision and guidance, the Legislature hoped to deter delinquent conduct. Our concern is not whether that hope has been or will be fulfilled but whether there is a rational basis for it. Though we acknowledge the difficulties of being a parent, we cannot say that there is no rational basis for the statute.

We note that courts in other jurisdicitions that have considered due process challenges to parental liability statutes have also sustained the statutes. Watson v. Gradzik, 34 Conn.Supp. 7, 373 A2d 191 (Ct.C.P. 1977); Vanthournout v. Burge, 69 Ill.App.3d 193, 387 N.E.2d 341 (1979); In re Sorrell, 20 Md.App. 179, 315 A.2d

110 (1974); General Ins. Co. of America v. Faulkner, 259 N.C. 317, 130 S.E.2d 64 (1963); Rudnay v. Corbett, 53 Ohio App.2d 311, 374 N.E.2d 171 (1977); Kelly v. Williams, 346 S.W.2d 434 (Tex. Civ.App. 1961); Mahaney v. Hunter Enterprises, Inc., 426 P.2d 442 (Wyo. 1967).[7]

It is of little constitutional significance that the statutes upheld in the above cases contained a maximum limit on liability. A fixed dollar limt would not adequately accomplish the State's purpose of compensation. By placing a limit on liability, the remedy becomes a form of civil penalty. We see no reason to believe that the imposition of a civil penalty on parents is a constitutionally

---

[7] Only in Georgia has such a statute been struck down, apparently because of that state's policy against imposition of liability without fault. Corley v. Lewless, 227 Ga. 745, 182 S.E.2d 766 (1971).

permissible means of encouraging discipline, but that vicarious liability for actual damages is not. See Rudnay v. Corbett, supra, 374 N.E.2d at 175 n.5.[8]

The dissent's suspicion that the statute will have its largest impact on the poor is no more than a hunch. Not only is the record before us bare of any

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[8] We note also the holding of some courts that the statutorily imposed liability of the parents is covered by regular homeowner's liability insurance since under these circumstances the parents themselves would not come within a policy provision excluding the carrier's liability for intentional torts. See Arenson vs. Nat. Auto and Cas. Ins. Co., 45 Cal2d 81, 286 P.2d 816 (1955); White v. LeGendre, 359 So.2d 652 (La.Ct.App.), cert. denied, 360 So.2d 1176 (Lan. 1978); Unigard Mut. Ins. Co. v. Argonaut Ins. Co., 20 Wash.App. 261, 579 P.2d 1015 (1978). Cf. Ambassador Ins. Co. v. Montes, 76 N.J. 477 (1978) (insurer obligated to compensate innocent parties on liability policy where insured who caused intentional injury would not benefit from coverage). But see Randolph v. Grange Mut. Cas., 57 Ohio St.2d 25, 385 N.E.2d 1305 (1979) (no coverage for intentional acts of minor son). We express no opinion on this subject.

evidence to support such a conclusion but amicus New Jersey School Boards Accociation claims that vandalism in schools is as much a problem in affluent school districts as in poorer ones.

Finally, we fully agree with the Appellate Division that the holding of Doe v. City of Trenton, 143 N.J. Super. 128 (App.Div. 1976), aff'd o.b., 75 N.J. 137 (1977), is not applicable here. In Doe, a city ordinance created a presumption of parental responsibility for delinquent acts of a child and imposed criminal liability on the parents. Applying the rule developed by the Supreme Court for presumptions in criminal prosecutions, the court held that it could not be said with "substantial assurance" that the presumed fact is "more likely than not" to flow from the proven fact. Id. at 132-33. Such a strict standard has no

place in reviewing statutes imposing civil liability, where only a reasonable relationship between the means and ends is required.

We conclude that N.J.S.A. 18A:37-3 does not violate due process of law in holding the parents or guardian of a public school pupil vicariously liable for the pupil's willful or malicious injury of school property.

IV

The defendants' equal protection challenge is based on the differing treatment of parents of public school pupils and parents of other children. If a child who is not a "pupil" within the meaning of N.J.S.A. 18A:37-3 damages public school property, the statute is unavailable as a basis of recovery by the school board. Consequently, the school board can recover

from the parents only if it can meet the more stringent standards of common law parental liability or N.J.S.A. 2A:53A-15. Under this latter statute, as well as common law, the parents are liable only if they failed or neglected to exercise reasonable supervision and control of the child's conduct. See supra at ___ n.2 (slip op. at 3 n.2); W. Prosser, supra, Sec. 123 at pp. 871-73. In other words, the parents must be at fault themselves before they can be held liable. This standard makes it difficult to subject a parent to liability when his child causes damage. In contrast, the standard of vicarious liability without fault applicable under the narrower scope of N.J.S.A. 18A:37-3 is much easier for plaintiff school boards to meet.

Under equal protection analysis, a statute must satisfy the standard of strict

scrutiny if it operates to the disadvantage of a "suspect class" or impinges upon a fundamental constitutional right. San Antonio Ind. School Dist. v. Rodriquez, 411 U.S. 1, 16-17 (1973). This standard requires that the statute be struck down unless the means chosen are necessary to promote a compelling governmental interest. Mathews v. Atlantic City, 84 N.J. 153, 167 (1980). It is clear in this case that the statute does not implicate a suspect classification, but defendants suggest two fundamental rights burdened by N.J.S.A. 18A:37-3.

The first of these is the right to bear children. This assertion merits little discussion. The effect of the vicarious liability statute on the decision of individuals to bear or beget children is speculative, at best. Other laws impose financial burdens on parents

because they have given birth to children. See N.J.S.A. 2C:24-5, 2C:62-1, 9:6-1, and 9:2-6; Grotsky v. Grotsky, 58 N.J. 354 (1971); Greenspan v. Slate, 12 N.J. 426 (1953). It can hardly be contended that judicial recognition of this fundamental right was meant to prevent the states from imposing financial obligations on parents. "With the right to bear and raise children comes the responsibility to see that one's children are properly raised...." Watson v. Gradzik, supra, 373 A.2d at 192. That responsibility can extend to vicarious liability for the child's intentional or malicious acts of vandalism.

The second suggested right, the right to a free public education, has not been recognized under the Fourteenth Amendment of the federal Constitution, San Antonio Ind. School. Dist. vs. Rodriguez, supra,

411 U.S. at 35, but has been designated a fundamental right protected by our State Constitution, Levine v. New Jersey Dep't of Inst., 84 N.J. 234, 258 (1980). We do not believe that N.J.S.A. 18A:37-3 burdens this fundamental right. First, the statute imposes liability on parents, not children whose rights to a free public education are at stake. Second, it is unlikely that subjecting parents and children to reasonable measures designed to promote discipline will deter children from availing themselves of the right to a free education. The remote potential for vicarious liability of parents does not pose a sufficient threat to this right of their children to amount to a constitutionally significant burden requiring strict judicial scrutiny of the statute.

Since a fundamental right is not burdened, the statute will satisfy the require-

ment of equal protection if "it rationally furthers some legitimate, articulated state purpose and therefore does not constitute an invidious discrimination...." San Antonio Ind. School Dist. v. Rodriguez, supra, 411 U.S. at 17. This standard has been described recently by the Supreme Court:

> Legislatures have wide discretion in passing laws that have the inevitable effect of treating some people differently from others, and legislative classifications are valid unless they bear no rational relationship to a permissible state objective.
>
> . . . . .

> (A legislative classification) will be upheld "unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational."
>
> (Parham v. Hughes, 441 U.S. 347, 351-52 (1979) (plurality opinion), quoting Vance v. Bradley, 440 U.S. 93, 97 (1979))

Here, the classification of public school parents is rationally related to a legitimate governmental objective, maintaining discipline in the public schools. As we have already said, the Legislature imposed vicarious liability on parents of public school pupils with the hope of encouraging more careful parental supervision and guidance of their children. Such supervision and guidance would undoubtedly aid school authorities in maintaining discipline in the schools.

The fact that the Legislature did not at the same time address the problem of

deterring delinquent behavior by non-public school children or the problem of compensating school districts for all acts of vandalism does not deprive the statute of its rational basis. A state may undertake resolution of problems one step at a time, addressing itself to the part of the problem that seems most acute. Williamson v. Lee Optical of Oklahoma, 348 U.S. 483, 489 (1955). A statute does not violate equal protection simply because it is underinclusive or could have been drawn more precisely to accomplish the governmental objectives. Michael M. v. Superior Court, supra, 67 L.Ed.2d at 445. The Legislature could reasonably have concluded that deterring damage to public schools were the immediate problems to be rectified. The statute is one way of achieving that objective.

We hold that the distinctions created by N.J.S.A. 18A:37-3 are rationally

related to a legitimate governmental purpose and therefore the statute does not deny equal protection of the laws.

V

The eradication of vandalism in public schools will require more than a parental liability statute. But the starting point for a solution could be a resurgence of the belief that parents should take responsibility for their children's activities. This responsibility comes with one's status as a parent and reaches legal and moral dimensions in our society. The laws of this State, if not higher principles, may properly provide incentives for parents to fulfill their roles in the lives of their children.

Since N.J.S.A. 18A:37-3 is constitutional, the school boards in these cases can maintain an action against the parents

based on vicarious liability. They will have to prove, however, that the statute applies under the construction we have given it. Thus, the school boards here must show that the defendant parents had legal custody and control of the pupils at the time they willfully and maliciously damaged school property.

In Piscataway, the parents made certain admissions, which are not ascertainable from the record before us. In the procedural posture of the case at present, the trial court must reconsider whether the summary judgment motion of the school board should be granted in light of this opinion. In Roselle, the trial court dismissed the count against the parents. That count must now be reinstated.

We remand to the trial courts for proceedings consistent with this opinion. The judgment of the Appellate Division is

affirmed. We do not retain jurisdiction.

Chief Justice Wilentz and Justices Sullivan, Schreibel, Handler and Pollock join in this opinion.

Justice Clifford has filed a separate dissenting opinion.

CLIFFORD, J. dissenting.

It is not entirely clear to me what Disraeli had in mind when he observed that there are two things the public should never see being made: sausage and law.[1] But I venture the notion that the remark aptly fits the process in wh h the Court has engaged today.

We have before us in N.J.S.A. 18A: 37-3 a statutory relic, created but a few short years after the Civil War, prior even to the adoption of the Fourteenth Amendment, in the "spare-the-rod" era. There is not the faintest hint of what moved the legislature to come up with this

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1. See Matter of Estate of Shields, 224 Kan. 604, 584 P.2d 139, 140 (Kan.1978) (MacFarland, J. dissenting). The epigram is sometimes attributed to Bismarck, even though it does not sound much like the Iron Chancellor. See In re Petition of Graham, 104 So.2d 16, 18 (Fla. 1958).

curiosity, other than some vague idea of discipline of pupils in the public schools. It has until recently been permitted to lie, unused, unrecognized, and unwanted, in the state of desuetude to which it had mercifully been consigned. When a modernday legislature sought to address the problem of malicious acts of vandalism by young people, it wisely ran right over this sorry reminder of times past and enacted L. 1965 c. 111, currently codified in N.J.S.A. 2A:53-14 and 15, supplemented it by L. 1970, c. 246, found in N.J.S.A. 2A:53-16 and 17. These statutes represent a balanced treatment of the nexus between "vandalism" and "parental neglect of child-supervision." See N.J.S.A. 2A:53A-14.

In the meantime their forebearer remains on the books in N.J.S.A. 18A:37-3. Rather than deliver to it the sock-dolager it so richly deserves, the Court encourages its resurrection. It does so not by interpreting

that enactment but by inventing a new one. It thereby not only gives its blessing to unsound policy -- the statute will, I suspect, impact largely on the poor and can be used to visit liability upon the parents of children who have remained immune to their parents' best efforts at the world's most difficult job, parenting -- but also perpetuates an enactment riddled with constitutional defects. Those defects are spelled out in Judge Crane's perceptive dissent below, 173 N.J. Super at 212. I agree with him in all respects and vote to reverse.

AFFIDAVIT AND
PROOF OF SERVICE
UNITED STATES SUPREME COURT-RULE 28

I, the undersigned, am regularly employed at the Law Offices of Monico and Rappa, 731 North Wood Avenue, Linden, New Jersey, 07036.

On the date indicated below, I served the attached

JURISDICTIONAL STATEMENT & APPENDIX

on the following persons at the addresses shown by depositing one copies of said documents at the United State Post Office or in the United States Mail Box, with first class postage prepaid.

All parties required to be served in this action have been served in accordance with the Rules of The Court, and the names of all such parties and their addresses for service are as listed herein.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATED: 9-8-81 Ann Lasker

STATE OF NEW JERSEY)
:SS
COUNTY OF UNION)

On this 8th day of September 1981

before me personally appeared

who, I am satisfied is the person named in and who executed the within instrument, and he duly acknowledged that he signed, sealed and delivered the same as his act and deed, for the uses and purposes therein expressed.

LINDA R. BROWN
A Notary Public of New Jersey
My Commission Expires June 29, 198

Linda R. Brown

NOTARY PUBLIC OF THE STATE OF N. J.

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File Number:

SUPREME COURT OF THE UNITED STATES
October Term 1981

BOARD OF EDUCATION OF PISCATAWAY TOWNSHIP, a public body of the State of New Jersey, Plaintiff-Respondent, v. MR. JOSEPH CAFFIERO, MRS. JOSEPH CAFFIERO, his wife, JAY CAFFIERO, MR. DANIEL O'DONNELL, MRS. DANIEL O'DONNELL, his wife, and FRANCIS O'DONNELL, Defendants-Appellants, and MR. DEAN MARTONE, MRS. DEAN MARTONE, his wife, and DEAN MARTONE, Defendants.	AFFIDAVIT OF SERVICE-RULE 28
BOARD OF EDUCATION OF THE BOROUGH OF ROSELLE, Plaintiff, v. TULIO MONAGAS, "JANE MONAGAS, (first name being fictitious)	

and ANGEL MONAGAS,)

Defendants)

and)

GREAT AMERICAN INSURANCE COMPANY,)

Intervenor.)

STATE OF NEW JERSEY)
:SS
COUNTY OF UNION)

Affiant, being duly sworn according to law upon his oath deposes and says that he is a member of the bar of the Supreme Court of the United States, and that to his knowledge the documents specified herein were deposited in a United States Post Office or United States Mail Box, first class postage prepaid, properly addressed to the Clerk of the Supreme Court of the United States, on September 8, 1981, and that such mailing was timely within the time permitted by the Rules of The

Court for the filing of such documents, and said documents were as follows:

JURISDICTIONAL STATEMENT & APPENDIX

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATED: 9/8/81 James D'Alfonso

STATE OF NEW JERSEY)
:SS
COUNTY OF UNION)

On this 8TH day of SEPTEMBER 1981 before me personally appeared who, I am satisfied is the person named in and who executed the within instrument, and he duly acknowledged that he signed, sealed and delivered the same as his act and deed, for the uses and purposes therein expressed.

Edward F. Kayra
NOTARY PUBLIC OF THE STATE OF N. J.
ATTORNEY

Motion to Dismiss or Affirm

Office - Supreme Court, U.S.
FILED
OCT 15 1981
ALEXANDER L. STEVAS,
CLERK

No. 81-505

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

MR. JOSEPH CAFFIERO; MRS. JOSEPH CAFFIERO, his wife; JAY CAFFIERO; Mr. DANIEL O'DONNELL; MRS. DANIEL O'DONNELL, his wife; and FRANCIS O'DONNELL,

Defendants-Appellants,

vs.

BOARD OF EDUCATION OF PISCATAWAY TOWNSHIP, a public body of the State of New Jersey,

Plaintiff-Appellee.

On Appeal from the Supreme Court of New Jersey

MOTION OF APPELLEE NEW JERSEY COMMISSIONER OF EDUCATION, TO DISMISS OR AFFIRM

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No. 81-505

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

MR. JOSEPH CAFFIERO; MRS. JOSEPH CAFFIERO, his wife; JAY CAFFIERO; Mr. DANIEL O'DONNELL; MRS. DANIEL O'DONNELL, his wife; and FRANCIS O'DONNELL,

Defendants-Appellants,

vs.

BOARD OF EDUCATION OF PISCATAWAY TOWNSHIP, a public body of the State of New Jersey,

Plaintiff-Appellee.

On Appeal from the Supreme Court of New Jersey

MOTION OF APPELLEE NEW JERSEY COMMISSIONER OF EDUCATION, TO DISMISS OR AFFIRM

Appellee, New Jersey Commissioner of Education, respectfully moves pursuant to Rule 16(1)(b) to dismiss this appeal or affirm the judgment of the Supreme Court of New Jersey on the grounds that the case does not raise any issue of special importance, does not conflict with federal precedent and is so obviously correct as to warrant no further review by this Court.

Opinions Below

The judgment of the Supreme Court of New Jersey affirming the validity of N.J.S.A. 18A:37-3 is set out in the appendix to appellants' Jurisdictional Statement at pp. Aa4-Aa43.*

Questions Presented

Does the public policy determination of the Legislature of the State of New Jersey as codified at New Jersey Statute 18A:37-3, which places liability upon persons who have legal custody and control of a child for property damage willfully or maliciously caused by that child in a public school violate the due process and equal protection clauses of the Constitution of the United States?

Counter-Statement of the Case

The within motion is filed on behalf of the New Jersey Commissioner of Education by the Attorney General of New Jersey. The Commissioner is charged with the gen-

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* Aa— refers to appendix attached to appellants' Jurisdictional Statement as if numbered in sequence.

eral supervision and control of public education in New Jersey. A major concern of the Commissioner has been the recent dramatic rise in vandalism and violence in the public schools. It has been estimated that vandalism alone cost the taxpayers of the State of New Jersey over $4.5 million for F.Y. 1977. Report of the 1978-1979 Task Force on Reducing Violence and Vandalism, New Jersey Department of Education. In an effort to address this growing problem, the New Jersey Legislature has charged the Commissioner with the responsibility to establish standards and promulgate rules and regulations to monitor the incidence of violence in the public schools of New Jersey and to establish a uniform record keeping system for the purpose of gathering information pertaining to offenses against persons and destruction of school buildings or property. N.J.S.A. 18A:4-29.1. In addition, the Commissioner has caused the creation of a Task Force on Reducing Violence and Vandalism with the purpose of making appropriate recommendations to the State Board of Edution. In this motion he is concerned with upholding the validity of N.J.S.A. 18A:37-3 because it is an important tool for preventing further increases in the financial burdens of taxpayers of the State for the costs of pupil vandalim of school property. In addition to this concern over increased costs, which local boards and the State can ill afford in these times of economic hardship, he is concerned that the removal of the legislatively mandated liability of persons having custody and control of children who cause property damage may have adverse impacts upon the local boards and the State's ability to maintain proper discippline in the public schools.

The statute in issue provides that:

> "The parents or guardian of any pupil who shall injure any school property shall be liable for dam-

> ages for the amount of the injury to be collected by the board of education of the district in any court of competent jurisdiction, together with costs of suit." N.J.S.A. 18A:37-3.

The predecessor of this statute was enacted in 1867 as part of an act establishing the New Jersey public school system. 1867 N.J. Laws, Chapter 179. The Legislature reenacted the statute in 1903 (1903 N.J. Laws, Chapter 1, §120), and codified it as part of Title 18A by 1967 N.J. Laws, Chapter 271. Although the statute has not been relied upon by local school boards during much of its existence, they have recently turned to it to deter vandalism and to cope with burgeoning costs.

In this matter the Piscataway Township Board of Education commenced an action in the Superior Court of New Jersey, Law Division, against appellants for damages arising from a May 9, 1976 vandalism incident at the Piscataway High School. Count Five of the board's complaint was based upon N.J.S.A. 18A:37-3 which places strict vicarious liability on the parents or guardians of pupils who damage school property. In response to this contention, appellants raised as a defense the unconstitutionality of the statute.

In order to resolve the constitutional issue, the board moved for summary judgment against appellant parents for any damage their children may ultimately be found to have committed. The Law Division found for appellants on the motion and declared N.J.S.A. 18A:37-3 unconstitutional.*

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* The decision is reported at *Bd. of Ed. of Piscataway* v. *Caffiero*, 159 N.J. Super. 347, 387 A. 2d 1263 (Law Div. 1978).

The board appealed to the Superior Court of New Jersey, Appellate Division, where its case was consolidated with another appeal involving the same issue involving the Board of Education of the Borough of Roselle. In a split decision, the Appellate Division reversed both trial court decisions. It held that the statute is constitutional and therefore the parents could be found liable under the statute for the damages to school property caused by their children.*

On appellants' appeal from the decision of the Appellate Division, the Supreme Court of New Jersey affirmed the decision of the majority of the appellate court. *Board of Education of Piscataway* v. *Caffiero,* 86 N.J. 408, 431 A. 2d 299 (1981).

On September 8, 1981, appellants filed a Notice of Appeal pursuant to 28 U.S.C. § 1257(2). Thereafter they filed a Jurisdictional Statement and this motion followed.

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* The decision is reported at *Piscataway Tp. Bd. of Ed.* v. *Caffiero,* 173 N.J. Super. 204, 413 A. 2d 981 (App. Div. 1980).

ARGUMENT

The appeal should be dismissed or the State Supreme Court judgment affirmed because appellants fail to raise a substantial federal issue, the case presents no issue of broad importance or conflict with federal precedent and the determination that the State legislative policy of placing the risk of loss for public property damage on the parents or guardians of a child causing such damage rather than upon the innocent public at large was not unconstitutional was plainly correct.

Generally, the Supreme Court of the United States will not concern itself with the policy or wisdom of a State statute that a state Legislature has the power to adopt. *Nichol* v. *Levy*, 5 Wall 433, 444, 18 L. Ed. 596, 599 (1867). It does not sit as a super-legislature to determine the wisdom, need and propriety of laws that touch economic problems, business affairs or social conditions. *Griswold* v. *State of Connecticut*, 381 U.S. 479, 482, 85 S. Ct. 1678, 1680, 14 L. Ed.2d 510 (1965); *Day Brite Lighting, Inc.* v. *State of Missouri*, 342 U.S. 421, 423, 72 S. Ct. 405, 407, 96 L. Ed. 469 (1952). See *Ferguson* v. *Skrupa*, 372 U.S. 726, 730, 83 S. Ct. 1028, 1031, 10 L. Ed.2d 93 (1963); *Cohen* v. *Beneficial Industrial Loan Corporation*, 337 U.S. 541, 550, 69 S. Ct. 1221, 1227, 93 L. Ed. 1528 (1949).

The state statute in issue on this appeal fixes liability as a matter of public policy upon the parents or guardians having custody and control over their children who cause property damage in the public schools. In addition, the Supreme Court of New Jersey has noted that the statute also has the purpose of encouraging the proper discipline of school children (Aa28). Its provisions, therefore, implicate matters of recognized and paramount State concern in the fashioning of rules of tort law and in the provision

of education. See *Martinez* v. *State of California*, —— U.S. ——, 100 S. Ct. 553, 557 (1980); *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 35, 93 S. Ct. 1278, 1297-98 (1973). Federal concerns are consequently minimal or essentially nonexistent in this appeal.

Appellants contend that N.J.S.A. 18A:37-3 violated due process because it imposes liability without any requirement that there be a showing that the liable individual was in fact the cause of the damage. In other words they contend that liability without fault is *per se* invalid. However, this notion has been rejected by this court in its previous decisions. See *Askew* v. *American Waterways Operators, Inc.*, 411 U.S. 325, 336, 93 S. Ct. 1590, 1597, 36 L. Ed.2d 280 (1973); *Crowell* v. *Benson*, 285 U.S. 22, 82, 52 S. Ct. 285, 304, 76 L. Ed. 598 (1932); *City of Chicago* v. *Sturges*, 222 U.S. 313, 32 S. Ct. 92, 56 L. Ed. 215 (1911). Liability without fault is clearly sustainable as a matter of public policy.

Due process requires only that a law shall not be unreasonable, arbitrary or capricious, and that the means selected bear a rational relation to the legislative object sought to be obtained. *Nebbia* v. *State of New York*, 291 U.S. 502, 525, 54 S. Ct. 505, 510, 78 L. Ed. 940 (1933). The statute in issue addresses the problem of where to place the risk of loss for willful public school property damage caused by public school students. Between the two innocent parties, the parents on the one hand and the public on the other, the Legislature in enacting N.J.S.A. 18A:37-3 chose to place the liability on the parent. This decision cannot be said to be arbitrary or unreasonable. The public is the injured party when public school property is damaged. The Legislature has chosen not to let the public suffer for willful or malicious property damage by also requiring it to pay for the damage. Parents have a special relationship to children and have a "guiding

role" to play in their upbringing. See *H.L.* v. *Matheson*, —— U.S. ——, ——, 101 S. Ct. ——, ——, 67 L. Ed.2d 388, 399 (1981); *Bellotti* v. *Baird*, 443 U.S. 622, 637-39, 99 S. Ct. 3035, 3045, 62 L. Ed.2d 797 (1979). The Legislature could reasonably expect that the imposition of liability on the parent would be a means to compensate the public for its loss and also diminish the future occurrences of such loss from willful property damage by encouraging parents to exercise greater discipline and control over their children. Clearly, no violation of Fourteenth Amendment due process is present in this appeal.*

Appellants also contend that their right to equal protection under the law has been violated by N.J.S.A. 18A:37-3. Since no suspect class or fundamental right is involved the statute will satisfy the requirement of equal protection if it rationally furthers some legitimate, articulated state purpose and therefore does not constitute invidious discrimination. *San Antonio Ind. School Dist.* v. *Rodridguez, supra*, 411 U.S. at 17, 93 S. Ct. at 1288. As the Supreme Court of New Jersey noted in citing a recent decision of this Court,

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* Eight other state Supreme Courts have considered due process challenges to parental liability statutes. *Watson* v. *Gradzik*, 34 Conn. Supp. 7, 373 A. 2d 191 (Ct. C.P. 1977); *Vanthournout* v. *Burge*, 69 Ill. App. 3d 193, 387 N.E. 2d 341 (1979); *In re Sorrell*, 20 Md. App. 179, 315 A. 2d 110 (1974); *General Ins. Co. of America* v. *Faulkner*, 259 N.C. 317, 130 S.E. 2d 645 (1963); *Ruanay* v. *Corbett*, 53 Ohio App. 2d 311, 374 N.E. 2d 171 (1977); *Kelly* v. *Williams*, 346 S.W. 2d 434 (Tex. Civ. App. 1961); *Mahaney* v. *Hunter Enterprises, Inc.*, 426 P. 2d 442 (Wyo. 1967). With the exception of the Georgia Supreme Court, which apparently has a state policy against liability without fault, all of the courts have sustained the statutes. See *Corley* v. *Lewless*, 227 Ga. 745, 182 S.E. 2d 766 (1971).

> "Legislatures have wide discretion in passing laws that have the inevitable effect of treating some people differently from others, and legislative classifications are valid unless they bear no rational relationship to a permissible state objective.
>
> • • •
>
> [A legislative classification] will be upheld unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational. *Parham* v. *Hughes,* 441 U.S. 347, 351-52 (1979) (plurality opinion), quoting *Vance* v. *Bradley,* 440 U.S. 93, 97 (1979)." *Board of Education of Piscataway, supra,* 86 N.J. at 324, 431 A. 2d at 807.

As previously discussed herein, the New Jersey parental liability statute is aimed at compensating the public for willful property damage caused by school pupils and encouraging the improvement of pupil conduct and discipline in the schools. The imposition of liability upon the parents of public school children is not an irrational means towards the accomplishment of these legislative goals.

Additionally, the fact that parents having children in the public schools are subject to liability, while parents not having children in the public schools are not, does not make the statute constitutionally infirm. A state may undertake resolution of problems one step at a time, addressing itself to the part of the problem that seems most acute. *Williamson* v. *Lee Optical of Oklahoma,* 348 U.S. 483, 489, 75 S. Ct. 461, 465, 99 L. Ed. 563 (1955). The New Jersey Legislature may have concluded that curbing violence and vandalism in the public schools

is a matter of more immediate concern which should be addressed with this legislation and in this manner. Certainly the problems faced by public schools and private schools may be different and may require different remedies. Any loss incurred by a public school represents a loss of public funds, for which the State Legislature has primary responsibility, whereas any loss to a private school will be borne from the funds of that private institution. In addition, if a private school finds that it has a problem with vandalism among its pupils, it can contract with the parents of its students to hold them liable for the costs of the intentional damage committed by their offspring. Therefore, the State legislative approach selected herein may not be regarded as either irrational or invidious in violation of the Equal Protection Clause.

The within appeal presents no substantial federal issue. Indeed the state legislation in issue is concerned with matters of paramount State concern in fashioning the local rules of tort liability and the provision of education in the State. Additionally, it presents no conflict with any federal precedent and the New Jersey Supreme Court correctly determined all of the issues presented. Under these circumstances it is respectfully submitted that the Supreme Court of the United States should dismiss the appeal or affirm the judgment of the Supreme Court of New Jersey.

CONCLUSION

For the foregoing reasons, this appeal should be dismissed or the judgment of the Supreme Court of New Jersey affirmed.

Respectfully submitted,

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Appellant's Reply Brief

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No. 81-505

In The

Supreme Court of the United States

October Term, 1981

MR. JOSEPH CAFFIERO, AND MRS. JOSEPH CAFFIERO, his wife,

Appellants,

vs.

BOARD OF EDUCATION OF PISCATAWAY TOWNSHIP, *et al.*,

Appellees.

On Appeal from the Supreme Court of New Jersey

REPLY BRIEF FOR APPELLANTS TO MOTION TO DISMISS OR AFFIRM FILED BY NEW JERSEY COMMISSIONER OF EDUCATION

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QUESTIONS PRESENTED

The question presented by this appeal is whether or not New Jersey Statute 18:37-3, violates the due process and equal protection clauses of the Constitution of the United States, where, by its terms that statute holds parents of public school children strictly and absolutely liable for damage caused to school property by their children.

The question presented by this present motion of the New Jersey Commissioner of Education is whether or not this appeal should be dismissed because it does not raise a substantial federal issue and does not present an issue of broad importance.

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REPLY BRIEF FOR APPELLANTS TO MOTION TO DISMISS OR AFFIRM FILED BY NEW JERSEY COMMISSIONER OF EDUCATION

ARGUMENT

This appeal raises substantial federal issues and presents issues of broad importance.

Appellants' jurisdictional statement and appendix has already explained in detail the circumstances of this case, and in its appendix has reported the opinion and dissenting opinion filed by the New Jersey Supreme Court.

Rather than reiterate what we have already stated in our jurisdictional statement, we respectfully refer the Court to it, and incorporate it herein by reference in response to this present motion of the New Jersey Commissioner of Education.

In reviewing the argument presented by the New Jersey Commissioner of Education on this motion, and the various opinions filed by the courts in this case, it appears to us that the dissenting opinion filed by the Honorable John F. Crane as Presiding Judge of the Appellate Division of the Superior Court of New Jersey makes a full and very appropriate response to the arguments made by the New Jersey Commissioner of Education on this motion. Therefore, as part of appellants' argument here we quote Judge Crane:

> "Because of my belief in the necessity of fundamental rationality in a rule of law, I cannot agree with the view of my learned colleagues and hence must dissent.
>
> The statute under review, N.J.S.A. 18:37-7, imposes vicarious liability without fault upon the parents or guardians of a pupil who injures any public school property. It does not require a showing of fault on the part of a pupil nor does it require a showing of lack of reasonable supervision and control on the part of the parent or guardian, as does N.J.S.A. 2A:53A-15. The liability imposed by N.J.S.A. 18A:37-3 is absolute and is predicated solely on the relationship of parentage or guardianship.
>
> In my view the enactment of such a law is beyond the power of the Legislature. Every principle of law, whether pronounced by a legislature or a court, must have a rational basis.

'It is not every Act, legislative in form, that is law. Law is something more than mere will exerted in an act of power . . . . Arbitrary power, enforcing its edicts to the injury of the persons and property of its subjects is not law, whether manifested as the decree of a personal monarch or of an impersonal multitude. [*Hurtado v. California,* 110 U.S. 516, 535-536. S. Ct. 111, 120-121, 28 L.Ed. 232, 238 (1884)]'

A legislative enactment which is arbitrary and unreasonable violates standards of due process of law. *Hudson Circle Servicenter, Inc. v. Kearny,* 70 N.J. 289, 301, 359 A2d 862 (1976). The exercise of legislative power must be reasonable. There must be rational connection between the imposition of liability and the conduct or activity upon which the liability is predicated. As was said in *Roselle v. Wright,* 21 N.J. 400, 122 A2d 506 (1956), with relation to an exercise of the police power,

'The exercise of the police power is contained by the rule of reason, the antithesis of the arbitrary action that is alien to the genius and spirit of our democratic society. The constitutional principles of due process and the equal protection of the laws ordain that the exercise of the power be wholly free of unreason and arbitrariness, and that the means selected for the realization of the policy bear a real and substantial relation to that end. [at 409-410, 122 A2d at 511]'

The majority opinion refers *A. & B. Auto Stores of Jones St. v. Newark,* 59 N.J. 5, 279 A2d 693 (1971), and *Adler's Quality Bakery, Inc. v.*

Gasteria, Inc., 32 N.J. 55, 159 A2d 97 (1960) as examples of instances in which statutes imposing liabiiity without fault have been upheld. The *Newark* case dealt with a statute (N.J.S.A. 2A: 48-1 et seq) imposing absolute liability on a municipality for damages caused during a riot. Obviously, the statute is predicated upon the duty of a city to control a riotous mob and prevent damage to private property. The *Quality Bakery* case involved a statute (N.J.S.A. 6:2-7) which imposed liability on the operator of an aircraft which caused injuries to persons or property on the land without regard to whether the operator was negligent. It is quite apparent that the operation of an aircraft creates a risk that persons and property on the ground may be injured; consequently, it may be said that a reasonable relationship exists between the act of operating an aircraft and the imposition of liability. The majority opinion also refers to Professor Prosser's treatise, *Law of Torts* (4 ed. 1971), §67 at 434, to the effect that there is a general trend toward the imposition of liability without fault. Examination of the illustrations given by Professor Prosser all relate to situations in which a risk of harm has been created by the party upon whom liability is imposed, such as keeping wild animals, putting a defective product into the stream of commerce, blasting, flooding, keeping fires, pile-driving and so forth. All of those instances involve situations where a risk of harm is created by action or failure to act of the party held liable. That is not the case here.

A statute which predicates liability solely on the status of the party to be held liable closely

resembles an act of attainder which is prohibited by N.J. Const. (1947), Art. IV, § VII, and U.S. Const. Art. I, § 9, par. 3. This statute imposes liability upon a specified group of persons, i.e. parents and guardians, by legislative fiat. Liability based solely upon status is arbitrary and beyond the legislative power of the state. See *Robinson v. California,* 370 U.S. 660, 679, S.Ct. 1417, 1426, 8 L.Ed.2d 758, 770 (1961), concurring opinion of Justice Harlan. See, also, *Williams v. Sills,* 55 N.J. 178, 186, 260 A2d 505 (1970).

Heretofore, as a matter of common law, New Jersey has adhered to the view that a parent may be liable for the tortious conduct of a child if, but only if, the parent fails to exercise reasonable care to control the behavior of the child, *Zuckerbrod v. Burch,* 88 N.J. Super. 1, 6, 210 A. 2d 425 (App. Div. 1965); *Mazzilli v. Selger,* 13 N.J. 296, 99 A. 2d 417 (1953); *M'Calla v. Wood,* 2 N.J.L. 81 (Sup. Ct. 1806). See also, *Stoelting v. Hauck,* 56 N.J. Super. 386, 401, 153 A. 2d 339 (App. Div. 1959), rev'd on other grounds, 32 N.J. 87, 159 A. 2d 385 (1960). This principle of law is in accord with 2 *Restatement, Torts* 2d, §316 at 123 (1965), and has now been made a part of our statutory law by N.J.S.A. 2A:53A-15.

If the Legislature may impose liability upon the parents or guardians of pupils who injure school property without requiring a showing that the parents failed to fulfill some duty, why may it not impose such liability upon grandparents or aunts and uncles? Why may it not impose liability upon any person who witnesses an injury to school

property, or any person who lives within 1,000 feet of a school? The point is that there is no logical connection between being a parent or guardian and injury to school property by a pupil. Reagan, 'A Constitutional Caveat on the Vicarious Liability of Parents,' 47 *Notre Dame Lawyer* 1321 (1972). The propagation or adoption of children is not, in the minds of reasonable persons, thought to create an unreasonable risk of harm for which liability without fault may be imposed.

A statute which sanctions the visitation of the sins of children upon their fathers without proof of wrongdoing on the part of either is fundamentally unfair and brings about a deprivation of property without due process. U.S. Const. Amends. V and XIV; N.J. Const. (1947) Art. I, Par. 1. *Doe v. Trenton*, 143 N.J. Super. 128, 362 A. 2d 1200 (App. Div. 1976), aff'd o.b., 75 N.J. 137, 380 A. 2d 703 (1977). I would accord our Constitution, which is 'widely recognized as the most forward-looking document of its kind in the Nation',[1] its full measure of protection. . . .

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1. Milmed-Constitution of 1947, N.J.S.A., Const. arts. 1 to 3 at 110.

*Editor's Note: The opinion of the Superior Court of New Jersey in *State v. Page*, published in the advance sheets at this citation (413 A. 2d 986), was withdrawn from bound volume publication."

(*See Piscataway Township Board of Education v. Caffiero*, 413 A. 2d 981, at 985, 986.)

We further feel that an appropriate response to this present motion was also made by the highly respected members of the Bar who compromise the Editorial Board of the New Jersey Law Journal, in the editorial published by the New Jersey Law Journal in its edition of October 1, 1981.[1] That editorial stated:

> "If you are a parent of a minor who attends public school, the Legislature has imposed and the Supreme Court has sustained an obligation on you never before known in New Jersey. The lawmakers have ordained that if a parent has a minor child in public school and the child commits an act of vandalism which causes damage to the school property the parent is liable for the loss suffered. The liability is absolute. It is of no consequence that the parent is a thousand miles away when the incident occurred or that the child was not acting at the direction of or in the slightest interest of or with the approval of the parent or that the parent had any knowledge of or reason to suspect from past irresponsible or similar conduct that the sibling might engage in such antisocial acts. Nor does it matter that the child had never engaged before in this or any other kind of vandalism, or that his reputation was of a quiet, studious, peace-loving

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1. Members of the Editorial Board are Alfred C. Clapp, Editor; and Associate Editors Albert G. Besser, Thomas J. Bitar, Vincent P. Biunno, William J. Brennan III, Albert Burstein, Robert A. Carter, Bernard Chazen, Clive S. Cummis, Robert J. Del Tufo, Jerry F. English, Virginia D. Fenton, John J. Francis, Sidney Goldman, Lee M. Hymerling, Thomas J. Herten, Edwin J. Jacobs, Jr., Howard H. Kestin, Irwin I. Kimmelman, Jack B. Kirsten, Myron W. Kronisch, Hugo M. Pfaltz, Jr., James C. Pitney, Donald J. Rapson, Joseph H. Rodriguez, Harold J. Ruvoldt, Jr., Morris M. Schnitzer, Annamay T. Sheppard, Richard H. Thiele, Jr., Carl Valore, Jr., George Warren, Junius W. Williams, Stephen B. Wiley, James R. Zazzali.

boy. If he engaged in or joined with others in this one act of vandalism that damages his public school, under the legislative mandate his thoroughly innocent and uninvolved parents must pay for the damage even though the cost may be ruinous for them.

This form of vicarious liability, that is liability simply and solely because of the relationship of parent and child is at odds with ageold principles of proximate cause and respondeat superior. In fact, it makes one wonder if there are any parents in the Legislature.

Consider the bizarre legal status that parents of minor children now occupy as the result of the statute. They have an inescapable and instant liability to the public school operating agency for any damage to school property or equipment caused by their children's act that can be said to come within the broad category of vandalism. And it makes no difference that the child involved had previous to this one act justifiably worn a good conduct halo. Nor does it make any difference from the standpoint of the parent's responsibility that the child had been brought up under rigorous and unquestionable model behavior standards.

The effect of the lawmakers' action is to deposit the minor child in the same category as a wild animal. It has long been the law that if a person undertakes to keep a wild animal on his premises and the animal escapes and attacks a neighbor or a passerby, the owner is liable. The

principle is that the owner keeps a wild animal at his peril.

Thanks to the Legislature, parents of public school minor students have been told that they are sending wild animals to school and if the children vandalize school property, the parents have no choice but to pay for it. It does not matter whether the school children are hellions or angels. A lifetime first act of willful misconduct causing damage to school property makes the innocent parent responsible."

(108 N.J.L.J. 296, October 1, 1981.)

CONCLUSION

We believe that the quoted opinion of Judge Crane, and the editorial statement published in the New Jersey Law Journal, show clearly that this appeal does involve substantial federal issues, and presents issues of broad importance. Therefore, we respectfully request that this Court deny the motion of the New Jersey Commissioner of Education to dismiss or affirm.

Respectfully submitted,

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Attorney for Appellants